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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-356

No. COA21-738

Filed 17 May 2022

Cabarrus County, No. 20 JT 16

IN THE MATTER OF: S.C.S.

Appeal by respondent-father from order entered 18 August 2021 by Judge Christy E. Wilhelm in Cabarrus County District Court. Heard in the Court of Appeals 27 April 2022.

Hartsell & Williams, P.A., by E. Garrison White, for Petitioner-Appellee Cabarrus County Department of Human Services.

Leslie C. Rawls for Respondent-Appellant-Father.

Administrative Office of the Courts, by Michelle FormyDuval Lynch, for the Guardian ad Litem-Appellee.

CARPENTER, Judge.

¶ 1 Respondent-Father appeals from an order (the "Order") terminating his parental rights as to his minor child, Dorothy.[1] On appeal, Respondent-Father

[1] A pseudonym has been used to protect the identity of the minor child.

challenges each of the three grounds the trial court found existed to support the termination of his parental rights. After careful review, we affirm the Order after concluding grounds existed to terminate Respondent-Father's parental rights based on the juvenile's dependency under N.C. Gen. Stat. §7B-1111(a)(6).

I. Factual & Procedural Background

¶ 2 Dorothy was born a healthy infant on 21 January 2020 in Concord, North Carolina. On the same day, Cabarrus County Department of Human Services ("DHS") received a Child Protective Services ("CPS") report alleging Dorothy was a dependent juvenile. Later that day, a DHS social worker met with Respondent-Mother at the hospital, and Respondent-Mother indicated she was "no longer able or willing to provide care for [Dorothy]." She further expressed her intent to relinquish her parental rights as to Dorothy.

¶ 3 Also on 21 January 2020, DHS filed a petition alleging Dorothy was a dependent juvenile and named Respondent-Mother a responsible individual.[2] The petition alleged that after Respondent-Mother gave birth to Dorothy, she told hospital staff she had "always known that she didn't want the baby, [and] it was always her plan to surrender." The trial court ordered the juvenile be placed in nonsecure custody of DHS that day.

[2] Respondent-Mother is not a party to this appeal.

¶ 4 On 22 January 2020, Respondent-Mother signed documents relinquishing her parental rights. Respondent-Mother did not provide placement options or information about her family, nor did she identify a putative biological father. On 23 January 2020, Dorothy was discharged from the hospital and placed in a licensed foster home. After conducting a hearing on the petition on 26 March 2020, the trial court adjudicated Dorothy a dependent juvenile and entered a written adjudication and dispositional order on 23 April 2020.

¶ 5 On 30 April 2020, the trial court entered a permanency planning order, in which it found, *inter alia*, Respondent-Mother relinquished her parental rights to Dorothy and had not revoked the relinquishment, Dorothy's biological father had not been identified, it was not possible to place Dorothy with either parent in the next six months, and the most appropriate primary plan is adoption with a secondary goal of legal guardianship. The trial court ordered Dorothy remain in the legal custody of DHS.

¶ 6 On 16 June 2020, Respondent-Mother provided DHS with the name and contact information of the putative father, Respondent-Father. Respondent-Father completed a paternity test on 18 June 2020, and he was found to be Dorothy's biological father on 25 June 2020. The record tends to show Respondent-Father did not know before DHS contacted him that Respondent-Mother had given birth or that the baby may have been his child, although DHS reports indicate Respondent-Mother

informed Respondent-Father of her pregnancy. On 29 June 2020, DHS filed a motion for review requesting the trial court conduct a permanency planning hearing under N.C. Gen. Stat. § 7B-906.1 to add Respondent-Father to the petition and obtain his case plan.

¶ 7 On 23 July 2020, the trial court held a permanency planning hearing. In its 13 August 2020 order, the trial court found, *inter alia*, a case plan was developed for Respondent-Father, and he agreed to complete identified items to remedy the issues that led to Dorothy's removal; it was not possible for Dorothy to be placed with Respondent-Father within the next six months; the most appropriate primary plan was adoption with a secondary plan of reunification; and Respondent-Father owed a duty of child support for the benefit of Dorothy.

¶ 8 Two other permanency planning hearings were held on 22 October 2020 and 25 March 2021, respectively. Following the 25 March 2021 hearing, the trial court entered a permanency planning order on 29 April 2021, in which it found, *inter alia*, Respondent-Father had not made adequate progress within a reasonable period under his case plan; had not been actively participating with the case plan, DHS, or the juvenile's guardian *ad litem*; and had not been acting in a manner consistent with the health and safety of the juvenile. Based on the trial court's findings, it concluded the primary plan for the juvenile remained adoption with a secondary plan of reunification.

¶ 9 On 5 May 2021, DHS filed a motion seeking to terminate Respondent-Father's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1)–(3), and (6). On 22 July 2020, the trial court conducted a hearing on the motion before the Honorable Christy E. Wilhelm. The social worker ("Social Worker") assigned to the case testified on behalf of DHS. She testified Respondent-Father's case plan required him to: complete a psychological assessment, a parenting capacity assessment, a substance abuse assessment and a random drug screen; obtain and maintain suitable housing; maintain contact with his DHS caseworker; and follow his visitation plan. Up until the termination hearing, Respondent-Father "made minimal efforts towards completing his case plan," although he had completed a psychological evaluation, a substance abuse assessment, a parenting education course, and random drug screens.

¶ 10 Notwithstanding Respondent-Father's progress with the case plan, DHS continued to have safety concerns as to his parenting and supervision of Dorothy because he "hasn't been able to show any behavioral change[s]," nor had he changed the conditions that led Dorothy to be removed from his care. Respondent-Father attended only about fifty percent of his weekly visits with Dorothy, making it difficult for Social Worker to know whether he could apply what he had learned in parenting classes and whether he could care for the young child apart from his supervised visits. Further, Respondent-Father did not attend any medical appointments for Dorothy.

¶ 11 Respondent-Father continued to use illegal drugs after completing his

substance abuse assessment. In March 2021, he tested positive for marijuana through a hair follicle drug screen. In June 2021, Respondent-Father was to complete urine and hair follicle screens; however, he did not have enough hair on his body to collect for testing. In July 2021, the month of the termination of parental rights hearing, Respondent-Father's urine was found to be cold after completing a urine screen, raising concerns Respondent-Father falsified the results of the drug screen. He thereafter admitted to taking hydrocodone.

¶ 12 Lastly, Respondent-Father failed to obtain suitable housing despite providing proof of sufficient income and employment and claiming on multiple occasions he was looking for housing without showing any progress. Respondent-Father continued to live with his grandmother, whom DHS found to be an inappropriate household member for Dorothy due to the grandmother's "extensive criminal background."

¶ 13 According to Social Worker, the primary plan for Dorothy at the time of the termination hearing was adoption, and the secondary plan was reunification. She admitted reunification was "not very likely" while adoption was "highly likely" with Dorothy's current foster family with whom she lived since she was discharged from the hospital as a newborn.

¶ 14 After hearing testimony from Social Worker, Respondent-Father, Dorothy's foster father, and the guardian *ad litem*, the trial court announced it found multiple grounds to terminate Respondent-Father's parental rights and that the termination

was in the best interests of the minor child.

¶ 15 On 18 August 2021, the trial court entered the written Order, terminating Respondent-Father's parental rights to Dorothy pursuant to N.C. Gen. Stat. § 7B-1111(a)(1) (neglect), N.C. Gen. Stat. § 7B-1111(a)(2) (willful failure to make reasonable progress), and N.C. Gen. Stat. § 7B-1111(a)(6) (dependency). The trial court concluded it is in the best interest of the juvenile for legal and physical custody to remain with the foster parents. Respondent-Father gave timely written notice of appeal from the Order.

II. Jurisdiction

¶ 16 This Court has jurisdiction to address Respondent-Father's appeal from the Order pursuant to N.C. Gen. Stat. § 7B-1001(a)(7) (2021).

III. Issues

¶ 17 The issues before this Court are whether: (1) findings of fact 12, 19, 22, and 36 are supported by clear, cogent, and convincing evidence; (2) the trial court erred in terminating Respondent-Father's parental rights by concluding he is incapable of providing for the juvenile's proper care and supervision pursuant to N.C. Gen. Stat. § 7B-1111(a)(6); (3) the trial court erred in terminating Respondent-Father's parental rights for willfully failing to make reasonable progress in correcting conditions pursuant to N.C. Gen. Stat. § 7B-1111(a)(2); and (4) the trial court erred in terminating Respondent-Father's parental rights by concluding he neglected the

juvenile pursuant to N.C. Gen. Stat. § 7B-1111(a)(1).

IV. Standard of Review

¶ 18 "Our Juvenile Code provides for a two-step process for termination of parental rights proceedings consisting of an adjudicatory stage and a dispositional stage." *In re Z.A.M.*, 374 N.C. 88, 94, 839 S.E.2d 792, 796 (2020); *see also* N.C. Gen. Stat. § 7B-1110(a) (2021). "[A]n adjudication of any single ground in [N.C. Gen. Stat.] § 7B-1111(a) is sufficient to support a termination of parental rights." *In re E.H.P.*, 372 N.C. 388, 395, 831 S.E.2d 49, 53 (2019); *see also* N.C. Gen. Stat. § 7B-1110(a). Thus, "if this Court upholds the trial court's order in which it concludes that a particular ground for termination exists, then we need not review any remaining grounds." *In re J.S.*, 374 N.C. 811, 815, 845 S.E.2d 66, 71 (2020) (citation omitted).

¶ 19 After finding at least one ground exists to support the termination in the adjudicatory stage, the trial court proceeds to the dispositional stage. N.C. Gen. Stat. § 7B-1110(a). In determining "whether terminating the parent's rights is in the juvenile's best interest" in the dispositional stage, the trial court considers the following factors and makes written findings on the criteria:

> (1) The age of the juvenile.
>
> (2) The likelihood of adoption of the juvenile.
>
> (3) Whether the termination of parental rights will aid in the accomplishment of the permanent plan for the juvenile.

> (4) The bond between the juvenile and the parent.
>
> (5) The quality of the relationship between the juvenile and the proposed adoptive parent, guardian, custodian, or other permanent placement.
>
> (6) Any relevant consideration.

N.C. Gen. Stat. § 7B-1110(a)(1)–(6).

¶ 20 "We review a trial court's adjudication that a ground exists to terminate parental rights under [N.C. Gen. Stat.] § 7B-1111 to determine whether the findings are supported by clear, cogent and convincing evidence and the findings support the conclusions of law." *In re A.M.*, 377 N.C. 220, 2021-NCSC-42, ¶ 14 (citations and quotation marks omitted). Moreover, "[f]indings of fact not challenged by [the] respondent are deemed supported by competent evidence and are binding on appeal. [W]e review only those findings necessary to support the trial court's determination that grounds existed to terminate [the] respondent's parental rights." *In re T.N.H.*, 372 N.C. 403, 407, 831 S.E.2d 54, 58 (2019) (citations omitted). "The trial court's conclusions of law are reviewable *de novo* on appeal." *In re C.B.C.*, 373 N.C. 16, 19, 832 S.E.2d 692, 695 (2019) (citations omitted and emphasis added).

¶ 21 "The trial court's dispositional findings are binding . . . if they are supported by any competent evidence or if not specifically contested on appeal." *In re B.E.*, 375 N.C. 730, 745, 851 S.E.2d 307, 317 (2020) (citation and quotation marks omitted). "The trial court's assessment of a juvenile's best interest at the dispositional stage is

reviewed only for abuse of discretion." *In re Z.A.M.*, 374 N.C. at 95, 839 S.E.2d at 797 (citations omitted). "Under this standard, we defer to the trial court's decision unless it is manifestly unsupported by reason or one so arbitrary that it could not have been the result of a reasoned decision." *Id.* at 100, 839 S.E.2d at 800 (citation and quotation marks omitted).

V. Analysis

A. Challenged Findings of Fact

¶ 22 On appeal, Respondent-Father challenges several of the trial court's findings of fact as not supported by clear, cogent, and convincing evidence. We address each argument in turn.

1. Finding of Fact 12

¶ 23 Respondent-Father does not contest the last two sentences of finding of fact 12 but challenges the remaining sentences.

¶ 24 The challenged portions of finding of fact 12 provide:

> There are no other options for this juvenile other than adoption. The court has found in the underlying juvenile matter that adoption is in the best interest of the child, and that is the primary plan for the juvenile.

¶ 25 Respondent-Father contends "[t]he remaining parts of the finding show the court relied on earlier findings in the underlying matter to reach the ultimate finding . . . that there were no options other than adoption," and no findings of fact support this ultimate finding. Because this finding is not necessary to the trial court's

conclusions of law relating to the adjudication or disposition, we do not consider it. *See In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58.

¶ 26 We conclude the finding that "[t]he court found in the underlying juvenile matter that adoption is in the best interest of the child" is an "ultimate finding" made by the trial court in its dispositional stage. *See In re N.G.*, 374 N.C. 891, 906, 845 S.E.2d 16, 29 (2020) (considering the "best interest" factors set out in N.C. Gen. Stat. § 7B-1110(a)); *see also* N.C. Gen. Stat. § 7B-1110(a). "[A]n ultimate finding is a conclusion of law or at least a determination of a mixed question of law and fact and should be distinguished from the findings of primary, evidentiary, or circumstantial facts." *In re N.G.*, 374 N.C. at 906, 845 S.E.2d at 29 (citations and quotation marks omitted). Thus, we determine whether the findings of fact support this ultimate finding.

¶ 27 In this case, the trial court's findings of fact reveal it considered the statutory criteria set forth in N.C. Gen. Stat. § 7B-1110(a), and the findings of fact demonstrate, *inter alia*: (1) Dorothy was eighteen-months-old at the time of the termination of parental rights hearing; (2) Dorothy's foster parents were willing and able to adopt her as soon as possible; (3) the termination of Respondent-Father's rights would achieve the permanent plan of Dorothy's adoption; (4) Respondent-Father failed to develop the appropriate bond with Dorothy; and (5) Dorothy has established a strong bond and connection with her foster parents and foster siblings in the eighteen

months she has lived with them. These findings in turn support the "ultimate finding," or conclusion of law, that adoption was in the best interests of the child; therefore, we defer to the trial court's decision and find no abuse of discretion. *See In re A.M.*, 377 N.C. 220, 2021-NCSC-42, ¶ 14; *In re N.G.*, 374 N.C. at 906, 845 S.E.2d at 27; *In re Z.A.M.*, 374 N.C. at 95, 839 S.E.2d at 797; *see also* N.C. Gen. Stat. § 7B-1110(a).

¶ 28 Lastly, the trial court's finding that adoption "is the primary plan for the juvenile," is supported by Social Worker's testimony at the termination hearing, and is therefore "supported by clear, cogent and convincing evidence." *See In re A.M.*, 377 N.C. 220, 2021-NCSC-42, ¶ 14.

2. Finding of Fact 19

¶ 29 Respondent-Father does not contest the first sentence of finding of fact 19, but argues the remaining sentences are unsupported by the evidence because he made "substantial progress" under his case plan. We disagree.

¶ 30 Respondent-Father also asserts "[t]he first three sentences of finding 19 rely in large part on the underlying order." Our case law makes clear the trial court may consider evidence from prior proceedings and orders when making its findings. *See In re T.N.H.*, 372 N.C. at 410, 831 S.E.2d at 60 ("A trial court may take judicial notice of findings of fact made in prior orders, even when those findings are based on a lower evidentiary standard because where a judge sits without a jury, the trial court is

presumed to have disregarded any incompetent evidence and relied upon the competent evidence.”).

¶ 31 Here, the trial court noted in the Order it took “judicial notice of prior orders in the action” after it heard testimony and other evidence at the termination hearing. We presume the trial court considered only competent evidence in making findings regarding Respondent-Father’s progress over the history of the case, and Respondent-Father has failed to show otherwise. *See id.* at 410, 831 S.E.2d at 60. Furthermore, findings made in finding of fact 19 are supported in part by Social Worker’s testimony, demonstrating “the trial court made an independent determination regarding the evidence presented.” *See id.* at 410, 831 S.E.2d at 61. Thus, we reject this argument.

¶ 32 Finding of fact 19 provides in pertinent part:

> Since the establishment of [Respondent-Father’s] case plan and the identification of safety concerns, the Court has consistently reviewed the father’s progress toward the case plan and his efforts to alleviate or remedy the issues which led to the removal of the juvenile from the home. [Respondent-Father] has never made any reasonable or adequate efforts toward the case plan to ensure the safety of the juvenile. There is a high probability of repetition of dependency of the juvenile if the juvenile were returned to the father’s custody based upon the father’s lack of commitment towards working on his case plan in that the father does not have an ability to provide care or supervision for the child, the father[ ] lacks an available alternative childcare arrangement for the juvenile and, the father’s incapability is likely to continue for the foreseeable future. The concerns that were present at the time of removal are still a concern, and there have not been any

> sustained behavior changes shown by [Respondent-Father].

¶ 33 As to the finding regarding Respondent-Father's efforts and progress under the case plan, the record provides ample evidence tending to show that although Respondent-Father completed many aspects of his case plan—including the parenting course that he completed days before the termination hearing—his efforts were not sufficient to address DHS's safety concerns or to resolve the conditions that led to Dorothy's removal.

¶ 34 Social Worker testified Respondent-Father did not make adequate progress with the case plan in a reasonable time period. Specifically, Respondent-Father was not in compliance with several components of his case plan, including refraining from illegal substances, obtaining suitable housing, attending scheduled visits with Dorothy, and attending medical appointments for Dorothy. Despite completing a substance abuse assessment, Respondent-Father continued to test positive or admit to taking illegal drugs, including during the month of the termination hearing. Respondent-Father failed to consistently visit Dorothy, making it to only approximately half of the scheduled times. He did not attend a single medical appointment for Dorothy, although he was apprised of the dates and times of scheduled appointments. Respondent-Father failed to obtain a safe home environment for the juvenile when he had over five months to do so after his proposed

placements were denied and almost one year since he agreed to obtain suitable housing pursuant to his case plan. This testimony constitutes "clear, cogent, and convincing evidence," which supports the findings in finding of fact 19 related to Respondent-Father's lack of progress. *See In re A.M.*, 377 N.C. 220, 2021-NCSC-42, ¶ 14. Similarly, the testimony supports the finding regarding Respondent-Father's insufficient behavioral changes and his failure to remedy the conditions that led to Dorothy's removal. *See id.*

¶ 35 Finding of fact 19 also includes an ultimate finding regarding dependency, which we will discuss in Section B.

3. Finding of Fact 22

¶ 36 Respondent-Father does not contest the first sentence of finding of fact 22 but contends "[t]he conditions that led to Dorothy's removal had been remedied to a substantial extent," and he has shown he is able to care for her health, safety, and welfare. We disagree.

¶ 37 Finding of fact 22 provides in pertinent part:

> [Respondent-Father] has not demonstrated any observable behavioral changes, has not made adequate progress under his case plan with[in] a reasonable period of time, has not remedied any of the conditions that led to the juvenile's removal, and has not shown the ability to care for the juvenile's health, safety and welfare.

¶ 38 We conclude finding of fact 22 is supported by clear, cogent, and convincing

evidence. *See id.* at ¶ 14. Social Worker testified Respondent-Father's ability to care for Dorothy and keep her safe was limited to his supervised visits. As discussed above, Respondent-Father continued using illegal drugs after his substance abuse assessment, did not attend the majority of his scheduled visits with Dorothy, did not attend any medical appointments for Dorothy, declined offers to visit with Dorothy outside of regularly scheduled visits, and failed to obtain suitable housing. These actions show Respondent-Father was unable to care for Dorothy's health, safety, and welfare.

¶ 39 Since confirming his paternity in June 2020 and obtaining his case plan in July 2020, Social Worker testified Respondent-Father had not completed his case plan within a reasonable amount of time as of the 22 July 2021 hearing. Additionally, he did not remedy the conditions that led to Dorothy's removal from his care or show he was able to care for Dorothy. The trial court properly weighed the evidence and determined the credibility to be given to the witnesses in making finding of fact 22. *See In re Whisnant*, 71 N.C. App. 439, 441, 322 S.E.2d 434, 435 (1984) (citation omitted) ("[I]t is the judge's duty to weigh and consider all competent evidence, and pass upon the credibility of the witnesses, the weight to be given their testimony and the reasonable inferences to be drawn therefrom."). Thus, finding of fact 22 is "supported by clear, cogent and convincing evidence . . . ." *See In re A.M.*, 377 N.C. 220, 2021-NCSC-42, at ¶ 14.

4. Finding of Fact 36

¶ 40 Lastly, Respondent-Father argues finding of fact 36 is not supported by clear and convincing evidence because "the condition of removal was remedied when [Respondent-Father] learned he was a father and engaged in his case plan." He further argues that his supervised visits with Dorothy demonstrated "his ability to care for Dorothy's health, safety, and welfare." We disagree.

¶ 41 Finding of fact 36 provides "[Respondent-Father] has not remedied any of the conditions that led to the juvenile's removal. [Respondent-Father] has not shown any behavior changes or the ability to care for the juvenile's health, safety, and welfare."

¶ 42 We first note a "juvenile's parent shall be a party [to an abuse, neglect, or dependency proceeding] . . . ." N.C. Gen. Stat. § 7B-401.1(b) (2021).

> At the dispositional hearing or a subsequent hearing, the court may order the parent . . . served with a copy of the summons pursuant to [N.C. Gen. Stat. §] 7B-407 to . . . [t]ake appropriate steps to remedy the conditions in the home that led to or contributed to the juvenile's adjudication or to the court's decision to removal custody of the juvenile from the . . . parent[.]

N.C. Gen. Stat. § 7B-904(d1)(3) (2021).

¶ 43 As soon as Respondent-Father was identified as Dorothy's biological father, DHS filed a motion for review with the trial court to add Respondent-Father to the petition. The trial court made findings in its 13 August 2020 permanency planning order as to Respondent-Father's case plan and ordered him to remedy the issues that

led to Dorothy's removal. The condition that caused Dorothy's removal—her parents' failure to protect her—was not remedied when Respondent-Father learned he was a father and engaged in a case plan. Rather, as discussed above, the trial court consistently found the conditions which led to Dorothy's removal from her parents' care continued to exist. In its latest permanency planning hearing order dated 29 April 2021, the trial court ordered Respondent-Father to continue "work[ing] on his case plan in order to remediate or remedy the issues which led to placement." Thus, the conditions that led to Dorothy's removal were not remedied at the time of the 29 April 2021 hearing, nor were they remedied before the termination hearing. The record contains ample evidence to support the finding Respondent-Father did not change his behavior despite completing some components of his case plan and was unable to care for the juvenile's health, safety, and welfare; therefore, finding of fact 36 is "supported by clear, cogent and convincing evidence." *See In re A.M.*, 377 N.C. 220, 2021-NCSC-42, ¶ 14.

B. Termination of Parental Rights under N.C Gen. Stat. § 7B-1111(a)(6)

¶ 44 In this case, the trial court concluded grounds existed to terminate Respondent-Father's parental rights under N.C. Gen. Stat. § 7B-1111(a)(1) (neglect), N.C. Gen. Stat. § 7B-1111(a)(2) (willful failure to make reasonable progress) and N.C. Gen. Stat. § 7B-1111(a)(6) (dependency). We begin our analysis by considering the trial court's findings of fact and conclusions of law as to N.C. Gen. Stat. § 7B-

1111(a)(6).

¶ 45 With respect to the adjudication on the ground of dependency, Respondent-Father argues the trial court "did not identify the condition that rendered [him] incapable of parenting Dorothy" to support its conclusion he was incapable of providing the proper care and supervision of the juvenile. Respondent-Father further argues "the evidence does not support any such condition or the continuation of any condition for the foreseeable future" because he substantially completed his case plan.

¶ 46 Grounds for terminating a parent's rights to a juvenile exist under N.C. Gen. Stat. § 7B-1111(a)(6) when

> the parent is incapable of providing for the proper care and supervision of the juvenile, such that the juvenile is a dependent juvenile within the meaning of [N.C. Gen. Stat. §] 7B-101, and that there is a reasonable probability that the incapability will continue for the foreseeable future. Incapability under this subdivision may be the result of substance abuse, intellectual disability, mental illness, organic brain syndrome, or any other cause or condition that renders the parent unable or unavailable to parent the juvenile and the parent lacks an appropriate alternative child care arrangement.

N.C. Gen. Stat. § 7B-1111(a)(6) (2021). Our Juvenile Code defines a "dependent juvenile" as one who is "in need of assistance or placement because . . . the juvenile's parent . . . is unable to provide for the juvenile's care or supervision and lacks an appropriate alternative child care arrangement." N.C. Gen. Stat. § 7B-101(9) (2021).

¶ 47 A trial court's

> adjudication under [N.C. Gen. Stat. § 7B-1111(a)(6)] requires [it] to make two ultimate findings: (1) that the parent is incapable (and will continue to be incapable for the foreseeable future) of providing proper care and supervision to their child, rendering the child a "dependent juvenile" as defined by [N.C. Gen. Stat.] § 101(9)[ ]; and (2) that the parent lacks an appropriate alternative child care arrangement.

In re K.C.T., 375 N.C. 592, 596, 850 S.E.2d 330, 334 (2020) (citations omitted); *see also* N.C. Gen. Stat. § 7B-1111(a)(6); N.C. Gen. Stat. § 101(9). The relevant period for determining whether a respondent-parent is able to provide proper care and supervision is at the time of the termination hearing. *In re Z.D.*, 258 N.C. App. 441, 453, 812 S.E.2d 668, 677 (2018) (holding the petitioners "failed to present clear, cogent, and convincing evidence to support the trial court's finding that [the r]espondent was *currently* incapable of caring for her son and that such incapability would continue for the foreseeable future") (emphasis added).

¶ 48 In the instant case, the trial court made the following pertinent ultimate finding regarding dependency in finding of fact 39: "[Respondent-Father] is incapable of providing for the proper care and supervision and there is a reasonable probability that [Respondent-Father's] incapability will continue for the foreseeable future. [Respondent-Father] has no appropriate alternative childcare arrangement."

1. Incapability to Provide Proper Care and Supervision

¶ 49 Respondent-Father relies on *In re M.J.R.B.*, 377 N.C. 453, 2021-NCSC-62, in

support of his argument the trial court made insufficient findings as to the conditions that made him incapable of caring for Dorothy. In *In re M.J.R.B.*, our Supreme Court agreed with the respondent-mother that "the trial court failed to find the absence of an acceptable alternative childcare arrangement, did not identify the condition that rendered [the] respondent-mother incapable of parenting [the juvenile], and did not address the issue of whether [the] respondent-mother's condition would continue for the foreseeable future." *Id.* at ¶ 27. Based on this lack of findings, the Court vacated and remanded the matter concerning the termination of the respondent-mother's parental rights. *Id.*

¶ 50 Here, unlike the trial court in *In re M.J.R.B.*, the trial court made findings as to the absence of an acceptable alternative childcare arrangement, Respondent-Father's incapability of providing care and supervision to Dorothy, and the likeliness Respondent-Father's incapability of parenting would continue for the foreseeable future. Although the trial court did not specifically make a finding as to what caused Respondent-Father to be incapable of parenting, it made the "ultimate finding" that he was "incapable of providing for [Dorothy's] proper care and supervision." To support this ultimate finding, the trial court also made several evidentiary findings, which indicate Respondent-Father's substance abuse as well as his lack of urgency and lack of persistence with respect to completing and complying with the case plan, caused him to be incapable of providing care and supervision to Dorothy. These

evidentiary findings include the following:

> 18. The safety concerns regarding the juvenile include, but are not limited to, lack of parenting, supervision, dependability, and suitable housing.
>
> 19. Since the establishment of [Respondent-Father's] case plan and the identification of safety concerns, the Court has consistently reviewed the father's progress toward the case plan and his efforts to alleviate or remedy the issues which led to the removal of the juvenile from the home. [Respondent-Father] has never made any reasonable or adequate efforts towards the case plan to ensure the safety of the juvenile. There is a high probability of repetition of dependency of the juvenile if the juvenile were returned to the father's custody based upon the father's lack of committment towards working on his case plan in that the father does not have an ability to provide care or supervision for the child, the father[ ] lacks an available alternative childcare arrangement for the juvenile and, the father's incapability is likely to continue for the foreseeable future. The concerns that were present at the time of removal are still a concern, and there have not been any sustained behavior changes shown by [Respondent-Father].
>
> 20. [DHS] completed background checks on [Respondent-Father], and a strengths and needs assessment was completed. The criminal record check revealed that [Respondent-Father] has a lengthy criminal history, beginning in 2011, with convictions including crimes against nature, assault on a female, drug possession, and felony probation violation. The strengths and needs assessment revealed that [Respondent-Father's areas of needs include substance abuse, caregiver life skills, and parenting. [Dorothy] is [Respondent-Father's] first child. [Respondent-Father] has advised that he is not in a relationship with [Dorothy's] birth mother, however, they do communicate occasionally with each other.

21. [Dorothy] has been in the custody of [DHS] for approximately eighteen (18) months, which is all of her life.

22. [DHS] has spoken with [Respondent-Father] extensively over the past six months, stressing the importance of what he must complete to be reunified with [Dorothy]. [Respondent-Father] does not act with any sense of urgency to complete his case plan so that he can be reunified with [Dorothy]. [Respondent-Father] has not demonstrated any observable behavioral change, has not made adequate progress under his case plan with[in] a reasonable period of time, has not remedied any of the conditions that led to the juvenile's removal, and has not shown the ability to care for the juvenile's health, safety and welfare.

. . . .

24. [Respondent-Father] also completed his substance abuse assessment and was recommended to complete 21 hours of Substance Groups with Genesis. [Respondent-Father] did complete that on December 19, 2020. However, despite completing the recommended treatment, [Respondent-Father] has not shown a behavior change. Additionally, [Respondent-Father] was ordered to submit to random drug and alcohol screens. [Respondent-Father] did not show on December 23, 2020 for his hair follicle screen. [Respondent-Father] appeared for a urine and hair follicle screen on March 10, 2021, where his urine results were negative, but his hair follicle results were positive for marijuana. On June 12, 2021, [Respondent-Father] had a negative urine screen, but did not have enough hair to produce for a hair follicle screen. On July 8 2021, [Respondent-Father] produced a cold urine sample but again did not have enough hair to produce for the hair follicle screen. [Respondent-Father] admitted to [DHS] that he had taken hydrocodone, even though he did not have prescription for the medication. [Respondent-Father's] evasive behaviors toward the drug screens, the admission to taking the hydrocodone, and the suspicious

nature of the cold urine screen is concerning.

. . . .

26. [Respondent-Father was to maintain suitable and appropriate housing for himself and his child. [Respondent-Father] has not obtained suitable housing. [Respondent-Father still resides with [his grandmother] in Stanly County, North Carolina. Due to [her] extensive criminal history, it is not suitable for the minor child to reside in the same home as her. [Respondent-Father] has informed [DHS] he is looking for housing for at least the last five months, but has shown no progress in that goal. There is no sense of urgency on [Respondent-Father's] part to obtain suitable housing. [DHS] has provided [Respondent-Father] multiple income-based housing places to try and contact in order to obtain housing.

27. [DHS] arranged a visitation plan with [Respondent-Father] for the minor child. [Respondent-Father] was scheduled to have supervised visitation with [Dorothy] once a week for two hours. At one point in time, the visitation schedule was altered to accommodate [Respondent-Father's] work schedule. However, [Respondent-Father] has regularly missed his visits, often due to a conflict with his work schedule or forgetting about his visits altogether. Visitation was being held virtually for some period of time due to COVID-19. On March 15, 2021, in-person visitation resumed. [Respondent-Father] was asked to call ahead of time to confirm he would be present for visitation, but would fail to call at all for the visits he missed.

28. When [Respondent-Father] did attend his visits, he was engaged with [Dorothy] by either feeding her, changing her, holding her, or playing with her. [Respondent-Father] would sometimes bring toys and gifts for [Dorothy] and if [Dorothy] started to become fussy, [Respondent-Father] would console her by walking around the room with her and holding her. However, even though [Respondent-

> Father] was engaged with [Dorothy] in visitation, there still remained concerns about his inconsistency in visitations. [Respondent-Father's] inconsistencies in visitation resulted in him not having the opportunity to use the parenting skills he had learned in class as well as being unable to develop an appropriate parental/child bond that would need to occur in order for there not be any concerns about placing [Dorothy] in his care.
>
> 29. [Respondent-Father has not attended any medical and/or dental appointments for [Dorothy]. [Respondent-Father] was regularly notified after the appointments regarding the outcome of the appointments and the date and time of any follow-up appointments. Despite being notified of these upcoming appointments, [Respondent-Father] did not attend any appointments. [Dorothy's foster parents] have taken [her] to all of her medical and/or dental appointments.
>
> . . . .
>
> 34. The juvenile has been in foster care all of her life. At the time of the TPR hearing, [Respondent-Father] still has not shown any urgency in alleviating the conditions which led to the juvenile's removal. [Respondent-Father] has the ability to comply with the case plan but has not alleviated the concerns which led to the juvenile's placement in a timely manner.
>
> . . . .
>
> 36. [Respondent-Father] has not remedied any of the conditions that led to the juvenile's removal. [Respondent-Father] has not shown any behavior changes or the ability to care for the juvenile's health, safety, and welfare.

¶ 51 These findings also support the conclusion Respondent-Father's incapability to provide Dorothy's care and supervision would continue for the foreseeable future.

Respondent-Father told DHS he had been looking for suitable housing for at least five months and did not provide DHS with any progress on the search, despite a social worker providing him with information on places to contact for housing. Respondent-Father continued to live with his grandmother, although DHS informed him that Dorothy could not cohabitate with his grandmother, nor could the grandmother serve as a caregiver or babysitter.

¶ 52 Moreover, Respondent-Father's March 2021 positive drug screen, his apparent attempts to either evade testing or produce fraudulent drug screen results, and his July 2021 admission to using illegal substances provide a reasonable probability that Respondent-Father's substance abuse, and thus his "incapability [to care for Dorothy,] will continue for the foreseeable future." *See* N.C. Gen. Stat. § 7B-1111(a)(6).

2. Alternative Child Care Arrangement

¶ 53 Respondent-Father does not contest the ultimate finding that he "lacks an appropriate alternative child care arrangement."

¶ 54 "Our courts have . . . consistently held that in order for a parent to have an appropriate alternative child care arrangement, the parent must have taken some action to identify viable alternatives." *In re L.H.*, 210 N.C. App. 355, 364, 708 S.E.2d 191, 197 (2011) (rejecting a respondent's claim that he made an alternative placement plan for the juvenile where the petitioner arranged the child care placement). The

following evidentiary findings support the ultimate conclusion that Respondent-Father did not identify an *appropriate* alternative child care arrangement:

> 13. On October 5, 2020, [DHS] resubmitted the request for the home study to be completed on . . . the paternal grandmother to [Dorothy]. However, the home study was not approved due to her previous history with [CPS].
>
> 14. A home study could not be initiated on [Respondent-Father's] grandmother . . . because he resides with her. However, [Dorothy's grandmother] could not be approved as a relative placement due to her extensive criminal activity.

¶ 55 Because Respondent-Father does not challenge findings of fact 13 and 14 on appeal, these findings "are deemed supported by competent evidence and are binding on appeal." *In re T.N.H.*, 372 N.C. at 407, 831 S.E.2d at 58. Findings of fact 13 and 14 in turn support the ultimate finding that Respondent-Father "lacks an appropriate alternative child care arrangement." *See In re A.M.*, 377 N.C. 220, 2021-NCSC-42, ¶ 14.

¶ 56 In light of ultimate finding of fact 39 and the aforementioned evidentiary findings, we hold the trial court made sufficient findings to support an adjudication of termination of parental rights under N.C. Gen. Stat. § 7B-1111(a)(6). *See In re K.C.T.*, 375 N.C. at 596, 850 S.E.2d at 334; *see also* N.C. Gen. Stat. § 7B-1111(a)(6). Having concluded grounds exist to support the trial court's termination of parental rights under N.C. Gen. Stat. § 7B-1111(a)(6), we need not review Respondent-Father's

remaining arguments as to neglect and willful failure to make reasonable progress. *See In re J.S.*, 374 N.C. at 815, 845 S.E.2d at 71.

VI. Conclusion

¶ 57 We affirm the Order because the trial court's pertinent findings of fact are supported by clear, cogent, and convincing evidence. These findings in turn support the conclusions of law that: (1) Respondent-Father is incapable of providing proper care and supervision to Dorothy; (2) Respondent-Father lacks an appropriate alternative child care arrangement; and (3) there is a reasonable probability that Respondent-Father's incapability will continue for the foreseeable future.

AFFIRMED.

Judges DILLON and ZACHARY concur.

Report per Rule 30(e).